



WEB COPY



W.P.No.19674 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.19674 of 2016

K.V.Vivekanandan

... Petitioner

Vs

1. Chennai Metropolitan Water Supply and Sewerage Board,
Rep by its Board of Directors,
No.1, Pumping Stations Road,
Chintadripet,
Chennai-600 002.
2. Employment Committee,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Stations Road,
Chintadripet,
Chennai-600 002.
3. Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Stations Road,
Chintadripet,
Chennai-600 002.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandaus to call for the records from the 2nd and 1st respondent, quash the order of the 2nd respondent bearing Proceedings No.CMWSSB/P&A/VC2/3439/2015 dated 14.08.2015 and the order of the 1st respondent dated 3.3.2016 bearing Proceedings No.CMWSSB/



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P&A/VC(A)/31301/2015 and consequently direct the respondents to reinstate the petitioner with continuity of service and all other attendant benefits.

For petitioner ... Mr.Balan Haridas

For Respondents ... Mr.Krishna Ravindran
Standing Counsel

ORDER

The petitioner herein joined in the Respondent Board as an Assistant Engineer on 28.05.1991. During his service, he had sought for Extraordinary Leave for the purpose of getting an employment abroad.

2. By accepting the petitioner's application, the respondent Board, had originally sanctioned Extraordinary Leave for a period between 24.01.2011 and 23.01.2012. Thereafter, the leave was sanctioned for a further period from 24.01.2012 to 23.01.2013 and from 24.01.2013 to 23.01.2015, thus totalling four years in all. While the petitioner was in the last span of sanctioned leave, he made an application on 05.01.2015, seeking for extension of leave for a further period of one year. However, without reference to this application, a Charge Memo dated 23.02.2015 came to be issued against the petitioner herein predominantly on the allegation that the petitioner had failed to join duty after expiry of the leave on 24.01.2015.



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3. The respondents Board thereafter had conducted an enquiry and the Enquiry Officer, claiming to have sent notice to the petitioner and since the petitioner did not turn up for enquiry, he was set ex-parte and the charges were held to be proved. On 18.06.2015, enquiry report was sent to the petitioner, to which, he had given his further representation on 29.07.2015. Not being satisfied with the explanation rendered by the petitioner in his further representation, the impugned order dated 14.08.2015 was passed, removing him from service. This order came to be confirmed on appeal on 03.03.2016. Both these orders are now under challenge in this writ petition.

4. Learned counsel for the petitioner predominantly raised a ground that no notice of enquiry was sent to the petitioner and that the enquiry report itself is a non-speaking one, bereft of any reasoning. By placing reliance on Rule 10(2) of The Employees' Service Regulations 1978 of CMWSS Board, learned counsel for the petitioner submits that even in cases where an oral enquiry is made, there is a duty cast upon the respondent Board to conduct proper enquiry. He also submits that the report of the enquiry officer is non-speaking in nature.

5. Per contra, learned Standing Counsel for the respondents Board submits



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that though the petitioner was initially sanctioned extraordinary leave without pay and allowances for a period of one year, there was a condition imposed that he would forfeit his lien in the Board if he does not rejoin duty after expiry of the leave granted. It is on this condition, his leave was extended periodically. By pointing out to the conditions in the letter dated 21.10.2014, learned counsel for the respondents submits that there was a similar condition contained therein that in case the petitioner does not report for duty on 24.01.2015, disciplinary action will be initiated. In this background, learned Standing Counsel submits that the petitioner's application dated 05.01.2015 does not deserve any consideration in view of the condition imposed in the order sanctioning leave.

6. I have carefully considered the submissions made by the respective counsel and perused the materials available on record.

7. Rule 15(i) of the Employees' Service Regulations 1978 of CMWSS Board, facilitates grant of leave to the scarce categories of staff/officers who intend to seek job abroad. Rule 15(ii) provides for granting of three years of extraordinary leave which can be extended for a further period of two years.

8. There is no quarrel about the entitlement of the petitioner to seek for leave



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for a total period of five years. In the instant case, admittedly, the respondents have sanctioned extraordinary leave to the petitioner for a period commencing from 24.01.2011 to 23.01.2015, totalling four years without demur. Before the final leave was due to expire on 23.01.2015, the petitioner made an application on 05.01.2015, seeking for extension of leave for a further period of one year, which is permissible under Rule 15 of the Employees' Service Regulations 1978 of CMWSS Board.

9. It is also not in dispute that the respondents have not acted upon the petitioner's application dated 05.01.2015. The only reply from the respondents on this aspect is that in view of the condition set forth in their letter sanctioning leave that he is required to join duty on 24.01.2015, failing which disciplinary action would be initiated, respondents are not required to act on his application dated 05-01-2015 and that, this action of the respondents itself indicate that no reply is required to the petitioner's application.

10. I am not in agreement with such contention raised by the respondents. When the Leave Regulation itself provides for A scarce employee to seek for extraordinary leave under Rule 15 for a period of three years, which can be extended for a period of two years, there is a duty cast upon the respondents to



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deal with the application made by the concerned employee who seeks to avail such leave for a maximum period of five years. Merely because there is a condition stipulated in the earlier sanctioned leave order, will not enable the respondents to take a stand that they need not have to reply to the leave application.

11. The main ground of attack to the impugned order is that the enquiry report culminated into passing of final order is a non-speaking order. As rightly pointed out by the learned counsel for the petitioner, the enquiry officer in his report dated 16.06.2015 had merely extracted the facts of proceeding, charge memo and merely by placing reliance to the Fundamental Rules 18(2), has come to the conclusion that based on the available details in the files, the charge stands as proved. The enquiry report as such is a single line report which states as follows:-

“ Conclusion:

*Thiru.K.V.Vivekanandan, Assistant Engineer (Electrical)
(under suspension) did not appear for the enquiry on
the due dates. Therefore, enquiry was conducted ex-
parte and based on the available details in the files I
am to state that the charges are proved.”*

12. Rule 10(2) of Service Rules governing the Board provides that even in cases where a charged official has omitted to attend an oral enquiry, such enquiry shall be held by the authority concerned in respect of charges which are not



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admitted by the charged person and which can be proved only through the evidence of witnesses.

13. In service jurisprudence, even in cases where a delinquent is set ex-parte, there is a duty cast upon the enquiry officer to render his independent findings on each and every charge based on the evidence available before him and thereby come to the conclusion as to whether the charges stand proved or not. In view of the specific provision under Rule 10(2) of Service Rules, the single line finding given by the enquiry officer that the “*enquiry was conducted ex-parte and that the charges are proved*” cannot be said to be a report which has given due consideration to the materials in hand. Therefore, the report itself must be held to be a culmination of non-application of mind on the part of the enquiry officer.

14. This apart, Rule 10(3) of the Service Rules provides that after enquiry has been completed and the authority competent to impose the penalty is of the opinion that any of the penalties should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish him a copy of the report of the enquiry or personal hearing or both, as the case may be and call upon him to submit his further representation, if any, within a reasonable time. This Rule further provides that any representation made by the person charged shall be taken



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into consideration before making any order imposing the penalty. In the instant case, in response to the enquiry report, the petitioner had given his objection on 29.07.2015, wherein, he had denied the receipt of the summons for the enquiry as well as the inaction on the part of the respondents in acting upon the petitioner's request dated 05.01.2015 seeking for extension of extraordinary leave.

15. These aspects were not at all addressed by the disciplinary authority and therefore, THE consequential order of punishment is also deemed to be a non-speaking order.

16. In the light of the above discussions, this Court is of the view that the enquiry itself is vitiated since it was not passed on any substantial material or evidence. As such, consequential removal order also requires to be set aside.

17. For the foregoing reasons, the impugned orders dated 14.08.2015 and 03.03.2016 are quashed and the matter is remanded back to the third respondent herein for a fresh consideration. The third respondent shall appoint a fresh enquiry officer in accordance with the procedure contemplated in the Employees' Service Regulations 1978 of CMWSS Board and intimate the same to the petitioner herein and thereafter, the enquiry shall be conducted after giving due opportunity to the



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petitioner and following the principles of natural justice. The appointment of the enquiry officer shall be made at least within a period of three months from the date of receipt of a copy of this order.

In the result, the writ petition stands partly allowed. No costs.

03.01.2023

Index: Yes/ No
Speaking Order/Non-speaking Order
sr

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M.S.RAMESH,J.,

SR

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